

Matter of: Stanley L. Evans
File: B-254264
Date: December 27, 1993

DIGEST

Former Navy member's request for waiver of his debt to the United States which arose when his savings allotment continued after his separation from the service is denied because former member is not without fault which bars waiver under 10 U.S.C. § 2774.

DECISION

Stanley L. Evans has appealed the June 8, 1993 settlement of our Claims Group which denied his request for waiver of the government's claim against him for funds he erroneously received upon separation from the U.S. Navy. We affirm the Claim Group's settlement.

Mr. Evans was separated from the Navy on August 5, 1991. Due to an administrative error, his monthly savings allotment of \$100.00 continued to be deposited in his checking account from August 1991 through March 1992 resulting in an overpayment of \$800.00. Credits reduced the overpayment to \$746.40.

The Defense Finance and Accounting Service, Cleveland Center, waived the August 1991, \$100.00 allotment because most members are not aware that they are not entitled to receive their allotments in the month of their discharge. However, DFAS did not waive the remaining \$646.40 because it found that Mr. Evans should have been aware that he was not entitled to the subsequent allotments through March 1992.

Our Claims Group agreed with the DFAS position and denied waiver of the remaining \$642.40.

Mr. Evans, in his appeal, states that he contacted his disbursing officer several times after receipt of the payments to see if he was entitled to the funds and was told the matter would be taken care of. He states that he thought that the payments were for his being in the inactive reserves.

Mr. Evans points out that his bank statements, which for the item in question read "NAVY ALLOT ACTIVE" but changed to "NAVY RETIRED ALLOT" after his separation, led him to the conclusion that it was payment for reserve service.

Since the notation states that it was an allotment, not reserve pay, and the fact that after separation it read "retired" when Mr. Evans was not entitled to any retired pay, we believe should have led him to further question the deposits.

Section 2774(a) of title 10, United States Code authorizes the Comptroller General to waive claims for erroneous payments to members or former members of the uniformed services, for pay and allowances, if collecting the claim would be against equity and good conscience, and not in the best interest of the United States. Further, waiver can only be granted if it is shown that the claim arose because of administrative error, with no indication of fraud, fault, misrepresentation or lack of good faith by the member or any other person in accepting the overpayment. 10 U.S.C. § 2774(b).

The standard we employ in determining whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that he or she was receiving more than their proper entitlement. Susan J. Carroll, B-252672, Sept. 20, 1993. As noted above, we find Mr. Evans at least partially at fault under this standard.

Accordingly, we affirm the action of the Claims Group and deny the request for waiver.

James F. Hinchman
General Counsel